

APPEAL NO. 172503  
FILED DECEMBER 11, 2017

This appeal arises pursuant to The Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §401.001 et seq. (1989 Act). A contested case hearing (CCH) was held on September 19, 2017, with the record closing on September 26, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that in Sequence No. 3, attorney's fees in the amount of \$704.00 are reasonable and necessary for services rendered beginning January 4 through January 31, 2017, and the appellant (claimant) had good cause for failing to appear at the CCH on June 12, 2017.

In a Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees Sequence No. 3 dated April 7, 2017 (Order), a Division employee approved 4.80 hours of attorney's fees out of 4.80 attorney's fees requested at \$200.00 per hour, and .90 hours of legal assistant's fees out of .90 hours of legal assistant's fees requested at \$65.00 per hour for a total attorney fee award of \$1,018.50. The claimant appealed, arguing that his attorney did nothing to advance his claim. The appeal file does not contain a response from either respondent 1 (carrier) or respondent 2 (attorney).

The ALJ's determination that the claimant had good cause for failing to appear at the CCH on June 12, 2017, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The standard for review in an attorney's fees case is abuse of discretion. Appeals Panel Decision 061189, decided July 24, 2006. 28 TEX. ADMIN. CODE § 152.4(d) (Rule 152.4(d)) effective January 30, 2017, increased the maximum hourly rates that may be charged by attorneys and legal assistants in the workers' compensation system. Effective January 30, 2017, the maximum hourly rates increased from \$150.00 an hour to \$200.00 for attorneys, and from \$50.00 an hour to \$65.00 an hour for legal assistants.

The attorney requested fees for 4.80 hours of attorney's time in the Order dated April 7, 2017, as follows:

.70 hours on January 15, 2017, for the receipt and review of documents;

.20 hours on January 15, 2017, for a telephone conference;  
.35 hours on January 9, 2017, for receipt and review of documents;  
.50 hours on January 9, 2017, for review of file;  
.60 hours on January 10, 2017, for drafting a letter;  
.60 hours on January 10, 2017, for receipt and review of documents;  
.50 hours on January 13, 2017, for drafting a letter;  
1.00 hour on January 15, 2017, for performing legal research; and  
.35 hours on January 31, 2017, for drafting a letter.

The attorney requested fees for .90 hours for legal assistant's time in the Order dated April 7, 2017, as follows:

.20 hours on January 4, 2017, for a telephone conference;  
.20 hours on January 9, 2017, for a telephone conference;  
.10 hours on January 9, 2017, for a telephone conference;  
.20 hours on January 10, 2017, for a telephone conference;  
.10 hours on January 20, 2017, for a telephone conference; and  
.10 hours on January 31, 2017, for a telephone conference.

The ALJ found in Finding of Fact No. 4 that a reasonable hourly rate for the attorney's fees in this matter for dates before January 31, 2017, is \$150.00 and \$50.00 for legal assistant time and in Finding of Fact No. 5 that a reasonable hourly rate for the attorney in this matter for dates on or after January 31, 2017, is \$200.00 and \$65.00 for legal assistant time. However, the rule became effective on January 30, 2017, not January 31, 2017. We note that the ALJ mistakenly included two Findings of Fact that are numbered 5 in her Decision.

The ALJ found that by Order dated April 7, 2017, in Sequence No. 3 an attorney's fee was approved in the amount of \$1,018.50, which fee included 4.00 hours of attorney time and 1.70 hours of legal assistant time. However, a review of the record reflects that the fee included 4.80 hours of attorney time and .90 hours of legal assistant time.

In her discussion of the evidence, the ALJ stated that there was no persuasive justification for the attorney or her legal assistant to receive more than the fee allowed by law. The ALJ then noted that the attorney performed 3.65 hours before January 31, 2017. However, the record reflects that the attorney performed 4.45 hours of service before January 30, 2017. The maximum hourly rate for legal services performed by an attorney at that time was \$150.00 per hour, which would be \$667.50. The attorney additionally requested fees for .35 hours for services performed on January 31, 2017, for which the maximum hourly rate would be \$200.00. In multiplying \$200.00 by .35, the amount of \$70.00 for attorney time is calculated for the January 31, 2017, date of service.

In her discussion of the evidence the ALJ noted that the legal assistant performed 1.60 hours of service at the rate of \$50.00 per hour prior to January 31, 2017 (1.60 hours multiplied by \$50.00 equals \$80.00). The ALJ indicated later that .10 hours for service by the legal assistant on January 31, 2017, would be \$6.50. The record reflects that the legal assistant performed .80 hours of service prior to the effective date of the rule, January 30, 2017 (for a total of \$40.00) and performed .10 hours of service on January 31, 2017 (for a total of \$6.50).

Adding the totals for services performed by the attorney prior to January 30, 2017 (\$667.50); the services performed by the legal assistant prior to January 30, 2017 (\$40.00); the total for attorney time on January 31, 2017 (\$70.00); and the total for legal assistant time on January 31, 2017 (\$6.50) equals \$784.00 rather than \$704.00 as determined by the ALJ. Accordingly, we reverse the ALJ's determination that in Sequence No. 3, attorney's fees in the amount of \$704.00 are reasonable and necessary for services rendered beginning January 4 through January 31, 2017, and render a new decision that in Sequence No. 3, attorney's fees in the amount of \$784.00 are reasonable and necessary for services rendered beginning January 4 through January 31, 2017.

The true corporate name of the insurance carrier is **CHARTER OAK FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge